

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7156 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KIRTIKUMAR S THAKORE

Versus

DIRECTOR

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Appearance:

MR RK MISHRA for Petitioners

MR SP HASURKAR for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/04/99

ORAL JUDGEMENT

1. Learned counsel for the petitioners contended that this matter is squarely covered by the decision of this Court in special civil application No.12243/94 decided on 11-9-1998 (Coram: Kundan Singh,J).

2. The facts of the case, in brief, are that the respondent No.2 was in the urgent need of the employees. In his office, permanent sanctioned posts of Class IV

employees of peons, sweepers, chowkidars, cooks were there. To make the appointment on the posts, the respondent No.2 called the applications and made the regular selection. The petitioners belong to either scheduled caste or scheduled tribe or socially and economically backward class category. The respondents filed reply to the special civil application in which they have admitted that the respondent No.2 did undertake sanctioned process for making the appointment. Interviews were held on 10th June, 1992 and the petitioners No.1, 2, 4, 5, 7 and 8 were found place in the select list. However, it is the case of the respondents that the petitioners No.3, 6 and 9 did not figure in the select list. From the reply of the respondents, it is admitted that the petitioners No.1, 2, 4, 5, 7 and 8 were appointed after they have been regularly selected on the Class IV posts. It is the case of the respondents that though the selections were made but the select list has not been operated on account of economy in expenditure imposed by the Government of Gujarat under their policy decision vide resolution dated 28th October, 1991. However, the respondents admitted that the petitioners NO. 1, 2, 4, 5, 7 and 8 were offered the work not as employee appointed as civil servants or government servant but on contractual terms and the terms have been accepted by the petitioners. So it is the case of the respondents that they have been given the work on hourly basis. The factual aspect, as stated in the reply has not been controverted by the petitioners by filing rejoinder. So it is not disputed by the petitioners that the names of the petitioners No.3, 6 and 9 did not figure in the select list.

3. Learned counsel for the petitioners contended that these petitioners are continuously working as daily wagers since the date as given out in para-3 of the special civil application. The petitioners have acquired a right of regularisation and their services are to be regularised.

4. On the other hand, learned counsel for the respondents contended that these are not the appointments on regular basis but are the appointments only on daily wages and daily wagers have no right of regularisation. In support of his contention, learned counsel for the respondents placed reliance on the decision of the Apex Court in the case of State of U.P. vs. U.P. Madhyamik Sikshan Parishad Sarvekshan reported in 1996 (1) SLR 303 and in the case of State of U.P. & Ors. vs. Ajaykumar reported in 1993 ((4) SCC 88.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. It is not in dispute that the petitioners are working with the respondents for last more than seven years by now. It is not the case of the respondents that their services are discontinued. The respondents have not disputed this fact that the petitioners are continuously working without any break from the respective dates. Reference in this respect may have to the pleadings as made by the petitioners in para-6 of the special civil application and the same have not been controverted. So these averments have to be taken to be correct. It is not the case of the respondents that the posts are not sanctioned. The posts are sanctioned and the selection has also been made but the select list was not operated because way back on 20th October, 1991, the State of Gujarat put some economy in expenditure. It is a case which clearly exhibits how the welfare State exploits the prevailing wholesale unemployment in the country. The respondents are in need of the employees, the posts are sanctioned posts and the selections have also been made but they have designed a way to exploit the unemployed youth of the country. It is true that the State of Gujarat may put ban on the appointments or it may make economy in its expenditure, but it can be only for bonafide reasons, purpose and object. Here in the present case, if we go by the facts, if it is the matter of economy in expenditure then no appointment could have been made. The select list has been prepared and the persons who have been selected were given the job. They are rendering their services to the respondents but they have been paid only daily wages. It is not the case where the petitioners are not discharging the same duties which are to be discharged by the Class IV employees for full time but the respondents are taking the full time work from them but so far as the payment of full salary is concerned or the claim of the petitioners for regularisation is concerned, the respondents, the officers of a Welfare State take the shield of this economy in expenditure. This approach of the respondents is certainly contrary to the provisions of Articles 14, 21 and 39 of the Constitution. The decision on which reliance has been placed by the learned counsel for the respondents is of little help. It is a deliberate creation which has been made by the respondents with clear object to deny the petitioners who are duly selected for the Class IV post, the full salary of the post. The petitioners No.1, 2, 4, 5, 7 and 8 are duly selected and in their cases, no exception can be taken and they are entitled for all the benefits. Merely

because they are being paid from the contingency fund, is of no consequence. The substance of the matter has to be considered. The object and purpose and more so where it is oblique purpose are to be accordingly considered. So far as the petitioners No.3, 6 and 9 are concerned, their case stand on different footing as their names does not appear in the select list. This is the rarest of rare case where the daily wage appointments were made from the select list prepared of the candidates.

7. For all these years, these persons are working and the respondents are taking work from them which goes to show that the respondents are in need of regular employees but they are taking the benefit of this theory of economy in expenditure for last more than six years, which has to be now discouraged and discontinued. Otherwise the exploitation of these low paid employees at the hands of none other than the officers of the welfare State will continue. It is equally the duty of the Court to see that the respondents, the officers of the welfare State may not be allowed to act contrary to Articles 14, 21 and 39 of the Constitution.

8. In the result, this special civil application succeeds and the same is allowed and the respondents are directed to consider the cases of the petitioners to give them the regular appointment in the pay scale of Class IV post from the date of filing of this special civil application i.e. 18th March, 1997. This benefit has to be given to the petitioners No.1, 2, 4, 5, 7 and 8. So far as the petitioners No.3, 6 and 9 are concerned, the respondents are directed to consider to give them the minimum of the pay scale of the Class IV post from 18th March, 1997 and in the meanwhile their cases may be considered for selection on the post. In case they are selected on the post they may also be given the same benefits of regular employees from the date of selection. In case they are not selected then it is open to the respondents to dispense with their services. The respondents are directed to pay Rs.5000/- as costs of this petition to the petitioners as what the learned counsel for the petitioners stated that he has charged this amount from the petitioners towards his professional fees. The amount of costs be paid to the petitioners in equal proportion by demand draft along with their salary which is to be paid for the month of May payable in the month of June, 1999. Rule is made absolute in the aforesaid terms with no order as to costs.

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